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5 In the Matter of

6 THE APPLICATION  
7 REGARDING THE  
8 CONVERSION AND  
9 ACQUISITION OF CONTROL OF  
PREMERA BLUE CROSS AND  
ITS AFFILIATES

No. G02-45

OIC STAFF'S RESPONSE TO  
REQUESTS FOR INTERVENTION

10 In compliance with the instructions contained in the Case Management Order issued  
11 by the Commissioner on October 24, 2002, the OIC Staff hereby submits its response to all  
12 petitions to intervene filed in this matter.

13 **I. PARTIES SEEKING TO INTERVENE ("PETITIONERS")**

14 On October 14, 2002, a group of organizations collectively filed a Motion to Intervene  
15 ("Combined Motion") which was subsequently supplemented on November 26, 2002, by a  
16 Memorandum in Support of Applicant-Intervenors' Motion to Intervene ("Combined Memo")  
17 and several declarations. The organizations generally allege their significant interests are  
18 based upon the status of their members or constituencies as enrollees, subscribers, contract  
19 holders and policyholders of Premera Blue Cross ("PBC"), as health consumers, and as  
20 beneficiaries of any foundations that may be established if the proposed transaction is  
21 approved. Combined Motion 3; Combined Memo 5. The organizations request that they be  
22 permitted to participate and engage in discovery without the imposition of any conditions.  
23 Combined Motion 11-12; Combined Memo 16-18. The organizations have expressly  
24 committed to combining their efforts to participate collectively as one party. Combined  
25 Memo 17. The organizations are listed below and have made the following allegations  
26 relating to significant interest:

1           1. **Washington Citizen Action** is a consumer watchdog organization with many  
2 members who are covered by PBC and who would benefit from the establishment of a  
3 charitable foundation. Combined Motion 3, 4; Flye Declaration 5, 7-8. This organization  
4 anticipates the need to engage in discovery. Flye Declaration 8.

5           2. **Welfare Rights Organizing Coalition** is a state-wide organization of low-income  
6 parents and their children many of whom are enrolled in Medicaid through PBC and will  
7 likely benefit from the establishment of a charitable foundation. Combined Motion 4; Colman  
8 Declaration 2, 4. This organization anticipates the need to engage in discovery. Colman  
9 Declaration 4.

10          3. **American Lung Association of Washington** is a statewide organization that  
11 advocates on behalf of those suffering from lung disease and many of whose members are  
12 enrollees of PBC and will likely benefit from the establishment of a charitable foundation.  
13 Combined Motion 4, 5.

14          4. **Northwest Federation of Community Organizations** is a regional organization  
15 that assists member community organizations in efforts to achieve economic and social  
16 justice. Washington Citizen Action is this organization's Washington state member  
17 organization. Combined Motion 5. This organization anticipates the need to engage in  
18 discovery. Hall Declaration 5-6.

19          5. **Northwest Health Law Advocates** is an organization that advocates on behalf of  
20 low and moderate-income individuals for access to healthcare in Washington whose  
21 constituency will be affected by any changes that may result to the coverage and care  
22 provided by PBC, many of whom are enrollees of PBC and who will benefit from the  
23 establishment of a charitable foundation. Combined Motion 6; Varon Declaration 3, 4, 6.  
24 This organization anticipates the need to engage in discovery. Varon Declaration 7.

25          6. **Service Employees International Union Washington State Council** is a labor  
26 organization representing workers in healthcare and other industries in Washington many of

1 whose members are enrollees of PBC and who will likely benefit from the establishment of a  
2 charitable foundation. Combined Motion 6; Menzies Declaration 2, 4. Some are health care  
3 providers who are involved with PBC as contracting providers. Over six thousand members  
4 are registered nurses. Menzies Declaration 2. This organization anticipates the need to  
5 engage in discovery. Menzies Declaration 4.

6 7. **The Children's Alliance** is a child advocacy organization some of whose members  
7 are PBC enrollees, subscribers, or policyholders and who will likely benefit from the  
8 establishment of a charitable foundation. Combined Motion 7-8; Arjun Declaration 2, 3. This  
9 organization anticipates the need to engage in discovery. Arjun Declaration 3.

10 8. **Washington Academy of Family Physicians** is a membership organization  
11 consisting of providers, the vast majority of whom are involved with PBC as providers or  
12 subscribers, or both and who will likely benefit from the establishment of a charitable  
13 foundation. Combined Motion 8; Black Declaration 2, 3. This organization anticipates the  
14 need to engage in discovery. Black Declaration 3.

15 9. **Washington Association of Churches** is an association of twelve Christian  
16 denominations consisting of over 1,200 church congregations in this state many of whose  
17 members are enrollees of PBC and will likely benefit from the establishment of a charitable  
18 foundation. Combined Motion 9; Watts Declaration 2, 3. This association anticipates the  
19 need to engage in discovery. Watts Declaration 3.

20 10. **Washington Protection and Advocacy, Inc.**, is a non-profit corporation that  
21 advocates on behalf of individuals in Washington who have physical, mental, and  
22 developmental disabilities. Many of those individuals are PBC enrollees and will likely  
23 benefit from the establishment of a charitable foundation. Combined Motion 10; Stroh  
24 Declaration 6. This corporation anticipates the need to engage in discovery. Stroh  
25 Declaration 7.  
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1           **11. Washington State Chapter of the National Organization for Women** is an  
2 affiliate of the national organization that advocates on behalf of women many of whose  
3 members are low-income women and their children who are enrolled in PBC and who will  
4 likely benefit from establishment of a charitable foundation. Combined Motion 11; Tosti-  
5 Lane Declaration 3. This organization anticipates the need to engage in discovery. Tosti-  
6 Lane Declaration 3.

7           On October 14, 2002, two associations collectively filed a Motion for Leave to  
8 Intervene (“Hospitals’ Motion”) which was subsequently supplemented on November 26,  
9 2002, by the Hospital Associations’ Supplemental Memorandum in Support of Motion to  
10 Intervene (“Hospitals’ Memo”) and two declarations. The associations generally allege their  
11 significant interest is based upon the status of their members as providers contracting with  
12 PBC and as constituting some of the founding members of a predecessor in interest of PBC.  
13 Hospitals’ Motion 3; Hospitals’ Memo 2; Mero Declaration 2; Sanders Declaration 2. Those  
14 founding members were asked by PBC in the mid-1980s to relinquish their memberships in  
15 exchange for the promises that PBC would continue to operate to the substantial benefit of  
16 hospitals and that, if it ceased doing business, it would distribute its net assets to contracting  
17 501(c)(3) corporate hospitals. Hospitals’ Motion 4. In addition, many members offer PBC  
18 coverages to their employees. Mero Declaration 2. The associations request that they be  
19 permitted to participate and engage in discovery without conditions. Hospitals’ Motion 5, 7.  
20 The associations apparently are willing to participate collectively as one party. The  
21 organizations are listed as follows:

22           **12. Washington State Hospital Association** is an association whose members are  
23 hospitals and related organizations located in Washington.

24           **13. Association of Washington Public Hospital Districts** is an association whose  
25 members are public hospital districts located in Washington.  
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1           14. On October 14, 2002, the **Washington State Medical Association** filed its  
2 Motion to Intervene (“WSMA’s Motion”) which was subsequently supplemented on  
3 November 26, 2002, by the Supplemental Filing to Washington State Medical Association’s  
4 Motion to Intervene (“Supplemental Filing”). The association’s membership consists of  
5 approximately 75% of the physicians who practice in Washington the majority of whom  
6 contract with PBC as health care providers. Supplemental Filing 3. The association requests  
7 full participation as a party including the right to conduct discovery. WSMA’s Motion 9;  
8 Supplemental Filing 3.

9           15. On November 26, 2002, the **University of Washington** filed its Petition for Leave  
10 to Intervene (“Petition”) on behalf of the University of Washington School of Medicine and  
11 its component organizations. The University, through the School of Medicine and its  
12 components, contracts as a provider with PBC and is the beneficiary of PBC’s support of  
13 medical education and training. Petition 2-3. The University does not seek full participation  
14 as a party in this proceeding but requests only that it be permitted to offer documentary  
15 evidence and to present oral and written argument with respect to the issues of preserving  
16 medical education and training and protecting medical coverage for the medically indigent in  
17 this state. Petition 6, 9. It does not intend to conduct discovery other than for potential  
18 rebuttal. *Id.*

19           On November 26, 2002, two organizations located in Alaska and an Alaskan resident  
20 collectively filed a Motion to Intervene (“Alaska Motion”). These parties request to be  
21 permitted to fully participate in this proceeding including the right to conduct discovery.<sup>1</sup>  
22 Alaska Motion 4-7. The parties apparently are willing to participate collectively as one party.

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24           <sup>1</sup> These petitioners’ representatives have apparently not complied with Rule 1(b) of the *Admission to*  
25 *Practice Rules*. The OIC Staff requests that, in the event any of these petitioners are permitted to participate in  
26 this proceeding in any manner, their representatives be required to promptly comply with the *Admission to*  
*Practice Rules* including, if appropriate, Rule 8(b).

1 The parties are listed below and have made the following allegations relating to significant  
2 interest:

3 16. **United Way of Anchorage** is an organization that raises funds for distribution to  
4 partner non-profit organizations that provide programs for low-income individuals and  
5 families in Alaska. Its interest is in supporting and fostering health care initiatives in Alaska.  
6 Alaska Motion 3.

7 17. **John Garner** is a disabled individual residing in Alaska who was covered by  
8 PBC from 1966 through 1990 and will likely benefit from the establishment of a charitable  
9 foundation in Alaska. *Id.*

10 18. **Anchorage Neighborhood Health Center** provides healthcare services to  
11 individuals in its community. Those individuals will likely benefit from the establishment of  
12 a charitable foundation in Alaska. *Id.*

13 19. On November 26, 2002, the **University of Alaska** filed a Motion for Leave to  
14 Intervene (“UA Motion”).<sup>2</sup> The University’s employees are enrollees of PBC. UA Motion 1.  
15 The University seeks to participate fully as a party in this proceeding. *Id.* at 4.

16 20. On November 26, 2002, the **Washington Association of Community and**  
17 **Migrant Health Centers** filed its Motion of Washington Association of Community and  
18 Migrant Health Centers for Leave to Intervene (“WACMHC Motion”). The association’s  
19 membership consists of a number of health care centers located in this state. A portion of the  
20 patients seen by the health care center members are enrollees of PBC and will likely benefit  
21 from establishment of a charitable foundation. WACMHC Motion 3. The association seeks  
22 to participate fully as a party in this proceeding. *Id.* at 4.

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23  
24 <sup>2</sup> This petitioner’s representative has apparently not complied with Rule 1(b) of the *Admission to*  
25 *Practice Rules*. The OIC Staff requests that, in the event this petitioner is permitted to participate in this  
26 proceeding in any manner, its representative be required to promptly comply with the *Admission to Practice Rules*  
including, if appropriate, Rule 8(b).

## II. STATUTORY FRAMEWORK

### A. Criteria for qualifying for participation.

Chapters 48.31B and 48.31C RCW generally control this proceeding. RCW 48.31B.015(4)(b) and 48.31C.030(4) specifically address the rights of intervenors. The relevant portions of the provisions are essentially identical and provide in pertinent part:

At the hearing, the person filing the statement, the [insurer or health carrier], and any person whose significant interest is determined by the commissioner to be affected may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith may conduct discovery proceedings in the same manner as is allowed in the superior court of this state.

RCW 48.31B.015(4)(b) and 48.31C.030(4). These provisions establish the criteria for the Commissioner to apply in qualifying parties to participate as intervenors in the proceeding. Specifically, a potential intervenor must show that it possesses (1) a significant interest (2) affected by the proposed transaction. This determination is solely within the discretion of the Commissioner.

Once a party has been qualified to participate under RCW 48.31B.015(4)(b) and 48.31C.030(4), the Administrative Procedure Act, chapter 34.05 RCW, (“APA”) establishes additional criteria for application. The statute provides in pertinent part:

The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

RCW 34.05.443(1). Thus, the petitioner must also show that intervention (3) is in the interests of justice and (4) will not impair the orderly and prompt conduct of the proceeding. In addition, to the extent not inconsistent with the APA, rule 24 of the *Superior Court Rules* applies. RCW 34.05.510(2).

### B. Conditions of participation.

If a petitioner is determined to qualify under the above provisions, the Commissioner may impose conditions upon its participation. The statute provides in pertinent part:

1 If a petitioner qualifies for intervention, the presiding officer may impose conditions  
2 upon the intervenor's participation in the proceedings, either at the time that  
3 intervention is granted or at any subsequent time. Conditions may include:

4 (a) Limiting the intervenor's participation to designated issues in which the intervenor  
has a particular interest demonstrated by the petition; and

5 (b) Limiting the intervenor's use of discovery, cross-examination, and other procedures  
6 so as to promote the orderly and prompt conduct of the proceedings; and

7 (c) Requiring two or more intervenors to combine their presentations of evidence and  
argument, cross-examination, discovery, and other participation in the proceedings.

8 RCW 34.05.443(2). This is in addition to the general authority conferred upon the  
9 Commissioner as presiding officer to regulate the proceeding. *See, e.g.*, RCW 34.05.431(2);  
10 34.05.437; 34.05.446; 34.05.449.

### 11 III. LEGAL ANALYSIS

12 The well-pleaded allegations contained in the petitioners' pleadings should be  
13 accepted as true for the purpose of determining whether they meet the standards for  
14 participation. *American Discount Corp. v. Saratoga West, Inc.*, 81 Wn. 2d 34, 36 (1972).

#### 15 A. Significant interest.

16 The two-fold test established by the legislature for qualifying a party to participate as  
17 an intervenor in a Form A proceeding is unique and no reported Washington decisions have  
18 been located that apply. Rule 24 of the *Superior Court Rules*, which follows the federal rule,  
19 is not directly applicable yet may provide some guidance. Under the rule, anyone shall be  
20 permitted to intervene "when the applicant claims an interest relating to the property or  
21 transaction which is the subject of the action and he is so situated that the disposition of the  
22 action may as a practical matter impair or impede his ability to protect that interest...." CR  
23 24(a)(2). This appears to be a more stringent standard than that required in a Form A  
24 proceeding since the interest is grounded in the property or transaction forming the subject  
25 matter of the action in contrast with mere possession of a significant interest. In addition, rule  
26



1 24 requires a showing that the outcome of the proceeding may impair or impede the party's  
2 ability to protect that interest while the Form A test requires that the party's interest only be  
3 affected by the proposed transaction. Finally, rule 24 is liberally construed by the courts of  
4 this state to permit intervention. *See, e.g., Columbia Gorge Audubon Society v. Klickitat*  
5 *County*, 98 Wn. App. 618, 623 (Div. 3, 1999). "When in doubt, intervention should be  
6 granted." *Id.* at 630. This liberal construction is made applicable to this proceeding since it is  
7 not inconsistent with the APA. *See* RCW 34.05.510(2).

8 Clearly, a party's interest must be more than that of a member of the general public.  
9 *See, e.g., Fritz v. Gorton*, 8 Wn. App. 658, 660 (Div. 2, 1973); *Ogden Allied Services, Inc. v.*  
10 *Philadelphia*, 1992 WL 223802 (E.D.Pa.). The legislature included the word "significant"  
11 and is presumed to have intended that the word not be applied in a manner to render it  
12 meaningless. *See, e.g., Nisqually Delta Ass'n v. DuPont*, 95 Wn.2d 563, 568 (1981). The  
13 statute lacks a definition of the word and, therefore, it must be given its ordinary meaning.  
14 *Rainier Bancorporation v. Dept. of Revenue*, 96 Wn.2d 669, 672-673 (1982). The  
15 Commissioner may refer to a dictionary to ascertain the common meaning of a term not  
16 defined by statute. *See Garrison v. Washington State Nursing Bd.*, 87 Wn.2d 195, 196 (1976).  
17 The word "significant" is defined as "momentous" or "important." WEBSTER'S II NEW  
18 RIVERSIDE UNIVERSITY DICTIONARY 1083 (1994). "Momentous" is defined as "[o]f utmost  
19 importance or outstanding significance." *Id.* at 764. "Important" is defined as "[h]aving or  
20 characterized by great value, significance, or consequence." *Id.* at 614.

21 Reliance by several of the petitioners upon *Kueckelhan v. Federal Old Line Insurance*  
22 *Company*, 69 Wn.2d 392 (1966), for the proposition that policyholders, creditors, and the  
23 public have a "significant interest" in the investments of an insurance company is misplaced.  
24 Combined Memo 7; Hospitals' Memo 7. In that case, the Washington Supreme Court did not  
25 focus on the language contained in the statutory provisions governing intervention in matters  
26 such as this, but was referring to the powerful public interest, as evidenced by the insurance

1 regulatory scheme established by the legislature, that insurance companies in general, and a  
2 mutual insurance company in particular, comply with the statutory requirements regarding  
3 investments. 69 Wn.2d at 407-412. Further, the cited dicta was used by the court in the  
4 narrow context of a rehabilitation proceeding where policyholders (the owners of a mutual  
5 insurance company), creditors and the general public each had a special stake in the continued  
6 viability of the company or, if rehabilitative efforts were to fail, the distribution of its assets.  
7 *See generally* chapt. 48.31 RCW. If the proposed interpretation of the case is accepted at face  
8 value, then all members of the general public would possess a significant interest in qualifying  
9 as intervenors in this matter. This clearly was not intended by the legislature.

10 Nor is the discussion relating to petitioners' alleged status as "aggrieved" persons  
11 under RCW 48.04.010 useful in determining whether they qualify to participate as  
12 intervenors. Combined Memo 8-12; Hospitals' Memo 9-11. That provision relates to the  
13 initiation of a proceeding by a party and not to including additional parties in a pending  
14 matter. *See, e.g., Wade v. Goldschmidt*, 673 F.2d 182, 184 (7<sup>th</sup> Cir. 1982). The applicable  
15 standards differ substantially and, arguably, the standard under RCW 48.04.010 is more  
16 stringent than that applicable in this proceeding for determining whether intervention should  
17 be allowed.

18 Finally, petitioner University of Washington's suggestion that it should be permitted to  
19 intervene on the ground that a statute or regulation it is charged with administering is at issue  
20 in this proceeding is meritless. Petition 8. Rule 24(b)(2) of the *Superior Court Rules* relating  
21 to permissive intervention is not applicable here since it is inconsistent with the criteria for  
22 qualification established under RCW 48.31B.015(4)(b) and 48.31C.030(4) as made applicable  
23 by RCW 34.05.443(1). RCW 34.05.510(2). Even if it were applicable, no party in this matter  
24 has relied "for ground or claim or defense upon any statute or executive order administered  
25 by" the University. CR 24(b)(2).  
26

1        B. Affected by the proposed transaction.

2        A primary focus of this proceeding is to determine to the extent possible what  
3 consequences will flow from the proposed transaction so that the Commissioner may make an  
4 informed decision concerning whether it should be approved. It neither appears reasonable  
5 nor logical to require a party seeking to intervene to show that the proposed transaction the  
6 subject of this proceeding will affect the party's particular interest. It is unfair to place on a  
7 party the burden to demonstrate how its interest will be affected when information about the  
8 transaction is still incomplete and not fully analyzed. Rather, such a party should only be  
9 required to show that its interest will potentially be affected by the proposed transaction, if  
10 approved. *But see* 8 Wn. App. at 662. If, during the course of the proceeding, it becomes  
11 apparent that the interest of a party initially granted intervenor status will not be affected by  
12 the proposed transaction, at that time the Commissioner may dismiss the party from the case.  
13 *See* RCW 34.05.443(3).

14        C. In the interests of justice.

15        The "interests of justice" criterion is so vague that it defies application undermining its  
16 usefulness in making this determination. RCW 34.05.443(1). It may be argued, however, that  
17 the significance of the proposed transaction is of such magnitude that the views and  
18 perspectives of all potentially affected constituencies ought to be elicited and considered in  
19 order that the Commissioner may make the most informed decision. In that sense, at least, the  
20 interests of justice will be served by assuring that those whose interests may be affected have  
21 been permitted to advise the Commissioner fully of such potential effects. While closely  
22 related to the standard applicable to the determination of whether a particular person should  
23 be permitted to participate, this analysis focuses on how the public interest is served by  
24 assuring the availability of relevant information to the decision maker, not just by providing a  
25 forum to a particular constituency.  
26

1        D. Will not impair the orderly and prompt conduct of the proceeding.

2        The question of whether a party seeking to intervene will adversely affect the conduct  
3 of the proceeding is an important consideration but may be dealt with as a practical matter  
4 through the authority granted to the Commissioner to condition participation of each party  
5 qualifying as an intervenor to ensure that the proceeding will not be unnecessarily burdened.

6        E. Interest is adequately represented by existing parties.

7        Petitioners Washington State Hospital Association and Association of Washington  
8 Public Hospital Districts suggest that since the OIC Staff “has no obligation to look out for the  
9 interests of hospitals,” their interests will not be adequately represented. Hospitals Memo 8.  
10 Assuming for the purpose of argument only that the OIC Staff has no such obligation, whether  
11 or not the hospitals’ interest will be adequately represented without participation by the  
12 hospitals is not a criterion applicable to this proceeding for determining whether the hospitals  
13 qualify as intervenors. This criterion is one element to be considered under Rule 24(a)(2),  
14 *Superior Court Rules*, for intervention of right in actions brought in superior court. It has no  
15 application here. RCW 34.05.510(2).

16        **IV. RECOMMENDATION REGARDING QUALIFYING FOR PARTICIPATION**

17        The OIC Staff recommends that each of the petitioners’ motions to intervene be  
18 granted for the reason that, in the view of the OIC Staff, each has demonstrated compliance  
19 with the requirements established by RCW 48.31B.015(4)(b), 48.31C.030(4) and  
20 34.05.443(1).

21        **V. RECOMMENDATIONS REGARDING CONDITIONS OF PARTICIPATION**

22        To promote the orderly and prompt conduct of this proceeding, the OIC Staff  
23 recommends that the following conditions of participation be imposed by the Commissioner.

24        The petitioners should be required to combine their presentations of evidence and  
25 argument, cross-examination, discovery, and other participation in this proceeding.

26        Specifically, the petitioners generally fall into two categories: providers and consumers.

1 Although the Service Employees International Union Washington State Council includes  
2 health care providers among its members and the Washington Academy of Family Physicians  
3 is an association of providers, both have elected to combine with other petitioners that fall into  
4 the consumer category. Therefore, taking this into consideration, the OIC Staff recommends  
5 that the petitioners be required to combine as follows:

6       1. **Consumers Group:** Washington Citizen Action; Welfare Rights Organizing  
7 Coalition; American Lung Association of Washington; Northwest Federation of Community  
8 Organizations; Northwest Health Law Advocates; Service Employees International Union  
9 Washington State Council; The Children’s Alliance; Washington Academy of Family  
10 Physicians; Washington Association of Churches; Washington Protection and Advocacy, Inc.;  
11 Washington State Chapter of the National Organization for Women; United Way of  
12 Anchorage; John Garner; Anchorage Neighborhood Health Center; and University of Alaska.

13       2. **Providers Group:** Washington State Hospital Association; Association of  
14 Washington Public Hospital Districts; Washington State Medical Association; University of  
15 Washington; and Washington Association of Community and Migrant Health Centers.

16       Each group should be treated as a single and separate party for the purposes of  
17 presentation of evidence and argument, cross-examination and discovery and be required to  
18 designate one “attorney-in-charge” to whom notice is to be directed and who will be reserved  
19 a seat at counsel table. Rule 43(a)(2), *Superior Court Rules*, should be applied to all parties.  
20 In the event that a petitioner seeks to act separately from the group with which it is combined,  
21 it may be permitted to do so only after leave is first obtained from the Commissioner after  
22 notice and hearing.

23       In addition, since all but one of the petitioners have stated an intention to make full use  
24 of discovery if admitted, the OIC Staff is concerned that without some limitations upon the  
25 parties’ conduct of discovery, the proceeding is likely to lose focus with efforts being  
26 expended instead on responding to numerous discovery requests and disputes which could

1 result in substantially interfering with the prompt and orderly conduct of the proceeding. The  
2 rules relating to discovery encourage the free exchange of information by placing the burden  
3 on the party resisting discovery to file objections or to seek a protective order. *See* CR 26-37;  
4 RCW 34.05.446(3). For example, only five days' notice is required to schedule a person's  
5 oral deposition. CR 30(b)(1). *See also* CR 33 (no limit on the number of interrogatories that  
6 may be directed to a party). A party seeking a ruling from the Commissioner relating to the  
7 propriety of taking a person's deposition pursuant to notice may be frustrated in its attempt to  
8 obtain a hearing within the notice period due to the lack of availability of the Commissioner.

9 To avoid such issues, the OIC Staff requests that, as soon as practicable, a prehearing  
10 conference be scheduled and held to discuss the forms of discovery that will be permitted in  
11 this matter and any limitations upon their use. In the alternative, the OIC Staff recommends  
12 that all parties' conduct of discovery be limited as follows: (1) Depositions may only be taken  
13 on prior motion or written request by a party upon a showing of good cause. (2) Any party  
14 may serve on any other party no more than two sets of 25 written interrogatories each,  
15 excluding interrogatories asking a party only to identify or authenticate specific documents  
16 and each discrete subpart of an interrogatory should be considered a separate interrogatory.

17 DATED this \_\_\_\_ day of December, 2002.

18 Respectfully submitted,

19 OFFICE OF INSURANCE COMMISSIONER  
20 STATE OF WASHINGTON

21  
22 By: \_\_\_\_\_  
23 John F. Hamje  
24 Staff Attorney WSBA #32400  
25 Legal Affairs Division  
26 Office of Insurance Commissioner  
360-725-7046  
360-586-3109 (Facsimile)

**CERTIFICATE OF SERVICE**

Pursuant to WAC 10-08-110(3), I certify under penalty of perjury under the laws of the State of Washington that this instrument was served upon all parties of record in this proceeding by transmitting a copy thereof by FAX, and, on the same day, mailing a copy thereof, properly addressed with postage prepaid, to the attorney for each party to the proceeding.

Dated: \_\_\_\_\_, 2002  
At Tumwater, Washington

\_\_\_\_\_  
John F. Hamje